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May 19, 1997

FOR MAIL ROOM

MAY 29 1997

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Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

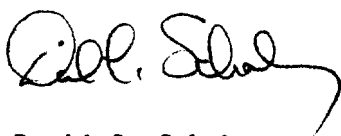
REF: ATTACHED PETITION FOR RULEMAKING
SUB: PIONEER PREFERENCE & REIMBURSEMENT OF
FEES FOR FM ALLOCATIONS

TO: The Secretary

Attached is an original and three copies of a Petition for Rulemaking to effect changes within the process of allocating FM channels and the awarding of construction permits. These changes are proposed to make the processes fairer and to stimulate continued growth of FM broadcasting which is being effectively stifled at this time.

Consideration of this Petition is greatly appreciated.

Sincerely yours,



David C. Schaberg

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

**1919 M STREET NW
WASHINGTON, DC 20554**

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In The Matter Of]
Changes To Rules Governing FM]
Broadcast Channel Assignments and]
Awarding of Construction Permits]

File No. _____

MM Docket No. _____

**PETITION FOR RULEMAKING:
PIONEER PREFERENCE
AND
REIMBURSEMENT OF FEES
AND COSTS OF RULEMAKINGS**

Now comes D. C. Schaberg on his own behalf and Petitions the Commission to review and revise its Rules and Regulations concerning Rulemakings for allocation of FM broadcast channels and the awarding of construction permits for newly-allocated channels. Petitioner is a broadcast engineering consultant of more than 25 years and has been involved with allocations since 1975. He had great input into Docket 80-90 and upon its approval provided communities with more than three dozen new channels and/or upgrades. He continues to work as a consultant.

ORIGINAL

BACKGROUND

- 1) When the Commission was told by Congress to institute a fee schedule such that the Commission would recover some, if not all, of its actual expenses involved in its operations, one of the things which became "feeable" was the initiation of a Rulemaking to assign a new FM channel to a community. This fee is presently in excess of \$2,000.00.
- 2) This fee has made a great difference in the amount of effort which has gone in to bringing new FM service to communities which have little or no local service because:
 - a) Nearly ninety-five percent of all new channels or upgrades will be in communities of less than 5,000 persons.
 - b) These communities do not have the economic base from which a broadcaster can expect to recover large costs of acquisition and construction.
 - c) On top of the filing fee for the allocation, significant amounts of money must be spent on engineering to find the channel to allocate. Many engineering firms charge more than \$2500.00 just to conduct the search.
 - d) Additionally, most petitioners must have a legal firm write the petition at a cost which can easily exceed \$3000.00.
 - e) Because of the scarcity of new channels, nearly every new allocation receives more than one application for construction permit which almost always ensures more expense.

- 3) Therefore, it is likely that a petitioner might spend \$10,000 to \$20,000 just to file the Rulemaking. And, it is very uncertain that a petitioner will succeed in obtaining a construction permit even after a hearing is held many years hence.
- 4) These provisions have made many prospective petitioners stay away from doing anything which might open their work up to general application by those who have more money, those who can steal the engineering work without paying anything for it because it is public knowledge the minute it gets to the Commission, or by those who would simply file knowing that they will probably get bought out of their application at some time in the future because a settlement will be the only way the successful petitioner/applicant will be able to obtain the construction permit.
- 5) In this mix, there is presently a freeze caused by the Courts which demanded that the Commission revise and redo its comparative criteria for awarding licenses. Therefore, very few persons are even attempting to allocate channels at this time because there is no reasonable likelihood of processing in the near future.
- 6) Further, Hon. John McClain has proposed auctioning all spectrum to the highest bidder. If this proposal passes, no one will spend the money to allocate any new frequencies because they would have to be the highest bidder to obtain the permit. Who will do the studies and find the channels to allocate and serve these smaller communities? Financial resources would become the ONLY measure of an applicant's ability to serve the community. We will have gone from something in the "Public Interest" to a system whereby we will only have the "Income Interest" to the government.
- 7) All of the above are making it very unlikely that any smaller communities will EVER receive new service in the future because it simply will not be good business to attempt to place a channel in those locations.

PROPOSAL FOR PIONEER PREFERENCE

8) If continued growth of service to communities (of any size) is to continue, we need to have a system that rewards the people who do the work. It is the same method by which inventions are protected by patent. If we did not have patents to protect the value of the invention, then inventors would simply stop inventing.

9) Therefore, if someone is willing to do all of the work and spend all of the money to allocate a channel to a community, then that person should be the ONLY person allowed to apply for the channel. If the Commission finds that they are qualified, they are rewarded for their efforts with the construction permit. If the Commission finds that they are NOT qualified or if they decline to apply within a specified window, then the channel may be opened for applications on any basis the Commission or Congress wishes.

REIMBURSEMENT OF EXPENSES

10) If such a preference is deemed not feasible, then the Commission should at the very least provide that an unsuccessful petitioner who did apply for the construction permit will be reimbursed by the successful construction permit applicant for their expenditures in allocating the channel: The allocation fee, the engineering studies and other work and the legal expenses involved. The reimbursement could be on the same basis as the sale of a construction permit. This would at least allow someone who might not be the successful awardee of a construction permit to at least try and do so, but relieves them of the heavy burden which such high expenses impose if not reimbursed. In other words, the present system penalizes the Petitioner by not providing any incentive to allocate a channel.

11) If someone was in the position of being able to do the allocation work and wished only to allocate a channel so that service could be provided within a community and that person so stated at the time the Petition was filed, then the Commission could open the application immediately for all applicants with the proviso that the Petitioner would receive reimbursement for his/her expenses. This proposal would assure that continued work on allocations could move forward and that new channels would be assigned no matter what format the actual process of awarding construction permits takes in the future.

REQUEST FOR RULEMAKING

12) It is therefore requested that the Rulemaking and all of its component parts herein be accepted by the Commission as being in the Public Interest because it will advance FM broadcasting without removing the Public Interest requirement that Congress believes is still important.

13) Further, the implementation of this Rulemaking will allow the Commission to operate in a more efficient and effective manner, allowing allocations and awarding of construction permits to be completed in less time than is presently necessary.

14) This Rulemaking will move the Comparative process one step down in the chain of how construction permits are awarded, making fewer of the channels go into a hearing setting. This will, of course, cut down on the amount of time and effort necessary to complete the process which will save the Commission's resources.

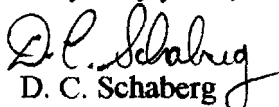
15) This Rulemaking will also result in more equitable treatment of all those would be good stewards of the airwaves by allowing them reasonable assurance that they will succeed if they follow the Rules. It eliminates (or nearly does) the purely chance situation which now faces anyone who wishes to start a new FM broadcast station.

16) We have seen the results of lifting the ownership caps: Large conglomerates now own most of the larger stations in the larger markets. Consolidation in the medium and smaller markets is in progress and those few would still be pioneers by starting new, stations will be encouraged to make the attempt if this Rulemaking is adopted.

17) There is nothing which this Rulemaking proposes which will change the basics of how FM broadcasting operates in this country. I only propose that the system be made more fair to those who would be the small businesses which fuel our nation; to give them a chance to compete on a level playing field with the larger companies. This Rulemaking makes taking the risk possible.

18) I ask for your consideration and prompt approval.

Very truly yours,



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